

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER 95-0616

Sales Tax

For The Period 1992, 1993, 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Tax Administration - Penalty

Authority: IC 6-8.1-10-2.1

STATEMENT OF FACTS

Taxpayer is engaged in the commercial printing business. An audit was performed on August 9, 1995 and a supplemental audit was completed September 17, 1996. The result was that the proposed assessment was reduced some 70%. However, as in the original assessment a 10% penalty was applied to the deficiency.

1. Tax Administration - Penalty

DISCUSSION

Taxpayer has agreed to pay the sum of \$12,583.49 as an adjusted liability. This liability is approximately 85% deficient sales tax, the balance deficient use tax on purchases. The taxpayer remitted about 96% of sales tax required on some \$7.5 million in sales over the audit period. During the audit period taxpayer made purchases in the amount of some \$46,000 without benefit of a use tax paid. A percent of error was calculated at 21.66%, based upon audit projections.

The controlling statute here is IC 6-8.1-10-2.1(d) which reads in part:

If a person subject to the penalty imposed under this section [(a) a deficiency that is due to negligence] can show *** was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

Thus, prior to the imposition of a ten percent penalty the department must find the taxpayer was negligent in terms of collection of sales tax or payment of use tax on its purchases. Upon such a finding, the taxpayer in order to avoid the penalty has the burden of persuasion to show its conduct was reasonable and not of willful neglect.

September 10, 1997 the department determined; in terms of the supplemental audit, the audit at issue; there were recurring transactions from a prior audit and said transactions were taxable then and now, hence a penalty was applied.

Further, the Department supported the penalty concluding the taxpayer has made no attempt to make corrections from a prior audit. A review of an audit performed for the years 1986 and 1987 indicates that deficient sales tax collection was 0.3% of total sales. In the subject audit the deficiency was about 4%.

FINDING

The taxpayer's protest is denied.